



February 20, 2007

## HOUSE BILL No. 1824

DIGEST OF HB 1824 (Updated February 15, 2007 12:21 pm - DI 75)

**Citations Affected:** IC 8-1; noncode.

**Synopsis:** Energy company regulation. Provides that a merger, a consolidation, a reorganization, a union, or certain stock transactions involving an energy company may not occur without the approval of the utility regulatory commission (IURC) if the transaction will cause at least 50% of the company's voting stock to be held by different interests. Requires the IURC to approve the transaction if the IURC determines that the transaction will result in a new entity with the technical, financial, and managerial capacity to provide adequate and reliable service. Requires the IURC to study the feasibility of establishing a regional public power authority to: (1) acquire the assets of an electric utility providing retail electric service on April 1, 2007, in specified counties in Indiana; (2) own and operate the assets acquired; and (3) act as a nonprofit utility to provide retail electric service to customers within the participating units. Requires the commission to report its findings not later than December 31, 2007, to: (1) the regulatory flexibility committee; (2) the legislative council; (3) the northwestern Indiana regional planning commission; and (4) the county executive of each county in the electric utility's service area on April 1, 2007. Authorizes the regulatory flexibility committee to recommend any legislation necessary to establish a regional public power authority in Indiana.

**Effective:** Upon passage.

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January 17, 2007, read first time and referred to Committee on Rules and Legislative Procedures.

February 7, 2007, reassigned to Committee on Commerce, Energy, and Utilities.

February 19, 2007, amended, reported — Do Pass.

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February 20, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

## HOUSE BILL No. 1824

A BILL FOR AN ACT to amend the Indiana code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: **Sec. 84.1. (a) This section applies to a**  
4 **transaction involving:**

5 (1) **a merger, consolidation, reorganization, or union involving**  
6 **an energy company;**

7 (2) **a tender offer or contract for the purchase, acquisition,**  
8 **assignment, or transfer of stock of an energy company; or**

9 (3) **a transaction described in subdivision (1) or (2) that:**

10 (A) **is combined with one (1) or more transactions**  
11 **described in subdivision (1) or (2);**

12 (B) **is conducted within three (3) years of a transaction**  
13 **described in subdivision (1) or (2); and**

14 (C) **causes at least fifty percent (50%) of the shares of an**  
15 **energy company's stock that are:**

16 (i) **outstanding at the time of the transaction; and**

17 (ii) **entitled to vote generally in the election of the energy**

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company's board of directors;  
to be beneficially held, directly or indirectly, immediately  
after the transaction by persons other than the persons  
that beneficially held, directly or indirectly, the shares of  
the energy company's stock immediately before the  
transaction.

(b) This section does not apply to a transaction involving an  
exempt wholesale generator or a direct or an indirect affiliate of an  
exempt wholesale generator if either the generator or the affiliate:

(1) is under the jurisdiction of the federal energy regulatory  
commission; and

(2) either:

(A) is not controlled by; or

(B) is not an affiliate of;

an energy utility that engages in retail sales in Indiana.

(c) As used in this section, "energy company" means an energy  
utility or an energy utility holding company.

(d) As used in this section, "energy utility" means an energy  
utility (as defined in IC 8-1-2.5-2) that provides retail energy  
service (as defined in IC 8-1-2.5-3) to more than forty thousand  
(40,000) retail gas or electric customers in Indiana.

(e) As used in this section, "energy utility holding company"  
means a corporation, company, partnership, or limited liability  
company that owns an energy utility.

(f) Except as provided in subsection (g), without the prior  
approval of the commission, a person may not, except in an  
intracorporate transaction, consummate a transaction described  
in subsection (a) that causes at least fifty percent (50%) of the then  
outstanding shares of an energy company's stock entitled to vote  
generally in the election of the energy company's directors to be  
beneficially held, directly or indirectly, immediately after the  
transaction by persons other than the persons that beneficially  
held, directly or indirectly, the shares of the energy company's  
stock immediately before the transaction.

(g) If the transaction to be consummated under subsection (f) is  
a transaction described in subsection (a)(3), approval by the  
commission is required only for the particular transaction that  
causes at least fifty percent (50%) of the then outstanding shares  
of the energy company's stock entitled to be voted generally in the  
election of the energy company's directors to be beneficially held,  
directly or indirectly, immediately after the transaction by persons  
other than the persons that beneficially held, directly or indirectly,

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the shares of the energy company's stock immediately before the particular transaction.

(h) An energy company that seeks approval of a transaction subject to this section shall file an application with the commission. In determining whether to approve a transaction subject to this section, the commission shall consider the following:

(1) The financial, technical, and managerial capacity of the new entity.

(2) The effect of the merger on the provision and cost of service to customers of the energy utility involved in the transaction.

(i) After notice and hearing, the commission shall approve a transaction subject to this section if the commission:

(1) considers the effect of the transaction on the provision and cost of service to customers; and

(2) finds that the transaction will result in a new entity with the technical, financial, and managerial capacity to provide adequate and reliable retail energy service.

(j) The commission shall, after notice and public hearing, enter an order either approving or disapproving a transaction subject to this section not later than one hundred thirty-five (135) days after the date on which an energy company files an application with the commission for approval of the proposed transaction. If the commission fails to issue an order within the one hundred thirty-five (135) day period allowed the commission under this subsection, the transaction shall be considered approved by operation of law as of the first day following the one hundred thirty-five (135) day period described in this subsection. If the transaction is approved by the commission or considered approved under this subsection, the commission may not take action in any state or federal administrative or judicial proceeding to oppose the transaction. Notwithstanding any other law, rule, or order, an order entered under this section is not subject to a petition for rehearing to the commission, and an appeal from the order must be filed in the Indiana supreme court not more than twenty (20) days after the date of the order.

(k) If commission approval of a transaction involving a:

(1) merger, consolidation, reorganization, or union involving an energy company; or

(2) tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of an energy company;

is not required under this section, commission approval of the

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transaction is not required under any other provision of this title.

(l) This chapter does not:

(1) prevent the holding of an energy company's stock that is lawfully acquired before April 1, 2007; or

(2) prohibit a merger, consolidation, reorganization, or union involving an energy company if the transaction was lawfully completed before April 1, 2007.

(m) This section does not nullify, restrict, or limit the authority of the commission under sections 83 and 84 of this chapter.

SECTION 2. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) As used in this SECTION, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that:

(1) provides retail electric service to:

(A) more than four hundred thousand (400,000); but

(B) less than five hundred thousand (500,000);

retail electric customers in Indiana on April 1, 2007; and

(2) has a service area that includes, among other counties, the counties described in IC 36-7-7.6-1.

(c) As used in this SECTION, "electric utility holding company" means a corporation, company, partnership, or limited liability company that owns an electric utility.

(d) As used in this SECTION, "regional public power authority" means a multicounty public power authority established to:

(1) acquire the generation, transmission, and distribution assets of an electric utility or an electric utility holding company;

(2) own and operate the assets described in subdivision (1); and

(3) act as a nonprofit utility to provide retail electric service to residential, commercial, industrial, and governmental customers within the participating units.

(e) The commission shall study the feasibility of establishing a regional public power authority. The study required by this subsection must include the following:

(1) An examination of the need to:

(A) enact new state statutes or regulations; or

(B) amend existing state statutes or regulations;

to permit the establishment of a regional public power authority.

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(2) A valuation of the electric utility's generation, transmission, and distribution assets to be acquired by the regional public power authority.

(3) A study of:

(A) existing and potential funding sources or other mechanisms, including the use of eminent domain, available to the regional public power authority to acquire the assets described in subdivision (2); and

(B) the method for determining each participating unit's respective:

(i) contribution toward the acquisition of the assets; and

(ii) ownership interest in the assets acquired.

(4) A study of similarly sized public power authorities operating in the United States, including information on the assets, expenses, operations, management, and customer bases of the authorities, to the extent the information is available.

(5) A cost benefit analysis of establishing a regional public power authority.

(6) A determination of whether the establishment of a regional public power authority is in the public interest.

(7) An examination of any other issues concerning the establishment of a regional public power authority that the commission considers relevant or necessary for study.

(f) As necessary to conduct the study required by subsection (e), the commission may:

(1) make use of the commission's existing resources and technical staff;

(2) employ or consult with outside analysts, engineers, experts, or other professionals; and

(3) consult with other:

(A) public power authorities operating in the United States; or

(B) state regulatory commissions that:

(i) regulate public power authorities; or

(ii) have conducted similar studies.

(g) Not later than December 31, 2007, the commission shall provide a report to the following on the commission's findings from the study conducted under subsection (e):

(1) The regulatory flexibility committee established by IC 8-1-2.6-4. The report provided to the regulatory flexibility committee under this subsection must be separate from the commission's annual report to the regulatory flexibility

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committee under IC 8-1-2.5-9(b).

(2) The legislative council. The report provided to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(3) The northwestern Indiana regional planning commission established by IC 36-7-7.6-3.

(4) The county executive of each county in the electric utility's service area on April 1, 2007.

(h) The report required by subsection (g) must contain the following:

(1) A summary of the commission's findings with respect to each issue set forth in subsection (e).

(2) Recommendations to the regulatory flexibility committee on any legislation needed to establish a regional public power authority.

(3) Any other findings or recommendations that the commission considers relevant or useful to the entities described in subsection (g).

(i) Before the commission submits its report under subsection (g), any entity described in subsection (g) may require the commission to provide one (1) or more status reports on the commission's study under subsection (e). A status report provided to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(j) The regulatory flexibility committee:

(1) shall review the analyses and recommendations of the commission contained in:

(A) any status reports provided by the commission under subsection (i); and

(B) the commission's final report provided under subsection (g); and

(2) may recommend to the general assembly any legislation that is necessary to establish a regional public power authority in Indiana, if the regulatory flexibility committee determines that the establishment of a regional public power authority is in the public interest.

(k) This SECTION does not empower the commission or any entity described in subsection (g) to require an electric utility to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission and all entities described in subsection (g) shall exercise all necessary caution to avoid

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1 disclosure of confidential information supplied under this  
2 SECTION.  
3 SECTION 3. An emergency is declared for this act.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy and Utilities, to which was referred House Bill 1824, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana code concerning utilities and transportation.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1824 as introduced.)

CROOKS, Chair

Committee Vote: yeas 6, nays 5.

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